

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARISSA CONNER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TIMOTHY CONNER,

Respondent-Appellant,

and

SUSIE CONNER,

Respondent.

UNPUBLISHED

October 21, 2003

No. 248424

Montcalm Circuit Court

Family Division

LC No. 99-010295-NA

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant's sole contention on appeal is that the trial court erred in terminating his parental rights without offering reunification services during his incarceration pending trial on criminal charges. This is an issue of law subject to de novo review. *General Motors Corp v Dep't of Treasury*, 466 Mich 231, 236; 644 NW2d 734 (2002). In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f. However, services are not required in all situations. *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000).

We conclude that reunification services were not required during respondent-appellant's incarceration because the petitioner's goal during that time was not reunification but termination of parental rights. A case service plan need not be directed at reunification. MCL 712A.18f(3)(d). Where the case service plan was directed toward the termination of parental

rights, the provision of services for respondent-appellant would have been inconsistent with the stated goal. Respondent-appellant argues that his incarceration pending trial did not justify petitioner's failure to provide services because he was entitled to be presumed innocent and in fact could be acquitted of the crime charged. While this argument may have some validity in a case in which reunification is a reasonable goal, it is irrelevant to the instant case where the case service plan was directed toward the termination of parental rights. We note further that respondent-appellant's incarceration was not the basis for the termination of his parental rights.

Finally, although reasonable services are generally required when a child is removed from the parent's home, *In re Terry, supra*, those services cannot be rendered without some degree of cooperation by the parent. From the outset of this matter, respondent-appellant has made himself unavailable and has failed to take any action toward regaining custody of his daughter. The evidence indicated that respondent-appellant could not be located at the outset of the case despite diligent efforts by petitioner. Correspondence to respondent-appellant's address that was on file with the court was not answered. The evidence strongly suggested that respondent-appellant then avoided service of notice pertaining to the adjudication hearing. Although respondent-appellant was ordered to participate in weekly supervised visitation from March, 20, 2002, until August 16, 2002, he never made any attempt to visit the minor child. Respondent-appellant was expected at a visit on May 8, 2002, but did not show. Moreover, all documents were served on respondent-appellant's attorney, who has represented him since May 8, 2002. Respondent-appellant has never contacted the petitioner although the service plan required him to do so on a bi-weekly basis. Where respondent-appellant demonstrated his resistance to any manner of cooperation from the outset of the case, we conclude that the agency was under no obligation to administer services subsequent to his incarceration. Stated otherwise, petitioner's efforts to render services were reasonable under the circumstances such that the termination of parental rights was not clear error. MCR 5.974(I).¹

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello

¹ Now MCR 3.977(J).